IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1063 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)

Versus

JAYSANTOSHI MATA STORES & 2 – Respondent

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Appearance :
MR KC SHAH ADDL PP for Appellant
MR SL VAISHYA for Respondent No(s).: 1, 2,3.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 18/08/2005

1.Heard Mr. K.C.Shah, learned Addl.P.P. for the appellant State and Mr. S.L. Vaishya, learned counsel for the respondents original accused.

2. The appellant State of Gujarat has preferred this Criminal Appeal under Section 378 of the Code of Criminal Procedure Code challenging the order of

acquittal dated 19.9.1995 passed by the learned Judicial Magistrate First Class, Deesa in Criminal Case No. 2303 of 1993 acquitting the present respondents original accused of the charges under Section 7 and 16 of the Prevention of Food Adulteration Act, 1954 (herein after referred to as 'the Act' for short). This court has granted leave and admitted the appeal vide order dated 8.1.1997.

3. The case of the appellant in short is that the original complainant Shri B.N. Trivedi on 24.6.1993 visited the shop of the accused, who was dealing in ghee and other edibles. The visit was occasioned on account of complaint received in respect of the vendor accused, who was reported to have indulged in selling of adulterated edibles. The complainant, in presence of panch witness purchased sample of pure ghee for the purpose of analysis. It was divided into three equal parts and collected in three dried bottles, which were sealed and wrapped and proper seal number was also affixed. After issuing notice in Form No. 6 under Rule 12 of the Prevention of Food Adulteration Rules, 1955 (herein after referred to as 'the Rules' for short), the panchnama was drawn and entire procedure was recorded in the panchnama, which was as per the prosecution in due compliance with requirement of Act

and Rules. On receipt of the report from the Public Analyst indicating the sample food article of ghee was not in conformity with the standard prescribed under the Rules, the Food Inspector prepared a report for obtaining consent of the Competent Authority for lodging complaint. Accordingly, the consent was granted and prosecution came to be lodged. The notice under section 13 (2) of the Act came to be issued informing to the accused that they have an opportunity to have the sample further tested before the Central Food Laboratory under the law within 10 days. The accused seems to have availed that opportunity and got the sample tested by the Central Food Laboratory. The report of the Central Food Laboratory also indicated that the sample food article of ghee was not in conformity with the standard laid down under the PFA Rules, 1955 and therefore, the article was adulterated. The learned Magistrate has framed two issues namely (i) Whether the prosecution proves beyond doubt that the accused have sold adulterated sample of ghee and committed an offence under Sections 7 and 16 of the PFA Act? And (ii) what order? The issue no. 1 was answered in negative and issue no. 2 is as per his order. The learned Magistrate has briefly discussed the issue and come to the conclusion that the prosecution has failed

in proving the guilt of the accused and therefore, acquitted the accused vide order dated 19.9.1995, which is under challenge in this appeal.

4. Shri Shah, learned Addl.P.P. has vehemently submitted that the reasoning recorded by the learned Magistrate is not supported by the documents on record. The reasoning has no support of law and therefore, the order of acquittal deserves to be quashed and set aside. Shri Shah has submitted that the report of the Central Food Laboratory, being a conclusive proof of evidence of adulteration, was sufficient to bring home guilt of the accused. It was not open to the learned Magistrate to expect the explanation from the prosecution for the difference in the report of the Central Food Laboratory and that of Public Analyst. Shri Shah has submitted that the learned trial Court has erred in holding that the prosecution has failed to explain the difference between the report of the Public Analyst and that of Central Food Laboratory. Shri Shah has submitted that it is established position of law that once the report of the Central Food Laboratory is obtained and is on record, the report of the Public Analyst looses its significance and that stand superseded. In view of this established position of law, it was not open to the trial Court to rely upon or

refer to the Public Analyst report for coming to the conclusion that difference between the two was to go in favour of the accused. The so called discrepancy between the report of the Public Analyst and that of Central Food Laboratory seems to be the sole ground for recording acquittal and as this ground is untenable in eye of established position of law, the order deserves to be reversed and quashed and set aside. Shri Shah has submitted that the report of the Central Food Laboratory being a conclusive proof of evidence, the same ought to have been appreciated by the learned Magistrate and the accused ought to have been convicted and awarded appropriate punishment. Shri Shah has submitted that the suggestion made by the prosecution in the cross-examination of the complainant in respect of discrepancy in the sample number, which is known as “LHA number” is of no avail to the accused in as much as the learned Magistrate has unequivocally recorded his finding that the same being typographical mistake, cannot be considered to be fetal to the prosecution case as the discrepancy in recording the number stands thus explained or answered and as the report of the Central Food Laboratory being a conclusive proof of evidence, the trial Court ought to have convicted the accused and awarded appropriate sentence under the PFA

Act and Rules. Shri Shah has submitted that in view of this, the impugned judgment deserves to be quashed and set aside and the accused deserves to be convicted and visited with appropriate punishment for the commission of offence under the PFA Act.

5. Shri Vaishya, learned counsel appearing for the respondents accused has submitted that this being an acquittal appeal, the court may not disturb the order of acquittal in absence of any perversity in the findings and reasoning of the trial Court resulting into grave miscarriage of justice. Shri Vaishya has further submitted that this being an acquittal appeal, the respondents accused has a right to advance and rely upon the submissions and reasoning different then that of learned Magistrate in support of the order of acquittal. Shri Vaishya has submitted that the law in respect of collecting the sample and the procedure required to be followed in collecting the sample has now crystallized. Shri Vaishya has submitted that when a sample of ghee is to be collected, it is required to be made homogeneous before the sample is collected. He relied upon the decision of this court in case of **LAXMICHAND BHAILAL THAKKAR VS. STATE OF GUJARAT** reported in 1995(2) GLR p.1528, wherein, this court has held that when sample of ghee is being collected, the

entire quantity needs to be made homogeneous before the same is collected. Shri Vaishya has submitted that looking to the complaint, testimony of the complainant, panchnama and other record, nowhere it has emerged that sample food article ghee was made homogeneous before the sample was collected. Shri Vaishya has submitted that the order of acquittal deserves to be maintained, even on another ground that the prosecution has failed in proving beyond doubt that the sample food article was same, as it was collected. He has invited this court's attention to the testimony of the complainant Food Inspector, wherein, a pointed question has raised to him in respect of discrepancy in the number, which is mentioned as “LHA Code No.” throughout the record and the same number is conspicuously absent and in that place, some other number is mentioned, which itself is sufficient to show that the prosecution has failed in proving beyond reasonable doubt that the sample, which was collected, was the sample which was sent for analysis and it was in fact analyzed by the Central Food Laboratory. Thus, the discrepancy in these two numbers is sufficient to raise doubt about the case of the prosecution and this benefit should go in favour of the accused for maintaining the order of acquittal. Alternatively, Shri Vaishya has further submitted that

considerable delay between the date of collection of the sample and it's analysis at the end of Central Food Laboratory, itself should go to show that the accused were prejudiced and hence, the finding of the laboratories cannot be relied upon for bringing home guilt on the part of the accused.

6. This court has perused the prosecution case and heard the learned counsel at length. The following undisputed facts emerged from the close perusal of the record and proceedings.

(a) The sample of ghee was collected on 24th June, 1993 at 10-00 a.m. in the morning from the provision store of the vendor. The sample of ghee was collected from the aluminum jar kept in the shop of the vendor.

(b) The complaint does not contain any averment that before collecting the sample food article of ghee, the entire quantity lying in the aluminum jar was stirred so as to make it homogeneous.

(c.) The panchnama at Ex.19 do not record anywhere that the sample food article was collected after stirring and making the entire quantity homogeneous. The panchnama records that the aluminum jar, wherefrom, the sample food article ghee was collected contained about 5 Kgs. of pure ghee.

(d) The testimony of the Food Inspector Original

complainant also do not suggest anywhere that the sample food article of ghee was collected after stirring and making the entire quantity of ghee homogeneous.

(e) The complainant has mentioned in his complaint that he had affixed and clearly mentioned the Code Number, Serial Number on the sample as under

“LHA Slip Code No.: 6/MSH/Deesa/28/93.

This number is also figuring at Ex.8 i.e. communication addressed by the Local Health Authority to the Judicial Magistrate First Class on 30.4.1994, wherein, it seems that the sample of food article was sent to the Court.

(f) The notice in form No. 6 under Rule 12 of the Rules at Ex.17 also contained the number as it is mentioned herein above i.e. 6/MSH/Deesa/28/93.

(g) The panchnama at Ex.19 also contains the number as it is mentioned herein above i.e. 6/MSH/Deesa/28/93 at least at 2 to 3 places in the test of the panchnama.

(h) The letter at Ex.25 issued by the Food Inspector to the Public Analyst also contained the same number i.e. 6/MSH/Deesa/28/93.

(i)The memorandum under Form III under Rule 7(3) also contains the said number i.e. LHA Slip Code Number is

6/MSH/Deesa/28/93 and the same is repeated in all other correspondence from the Food Inspector to various authorities. Same have been exhibited on the record.

(j) The report of the Public Analyst, which is exhibited at Ex.47 also contains the said number namely 6/MSH/Deesa/28/93.

(k) Ex.48 is the detail of sample signed by the Public Analyst also contain at Sr.No. 1 Code Number and Serial Number of the LHA as 6/MSH/Deesa/28/93.

(l) The certificate dated 16th June, 1994 issued by the Director of Central Food Laboratory, Gaziyabad contains altogether different number of LHA Slip, which is mentioned as " 6/MSH/Deesa/25/63.

(m) A pointed question was raised by the defence in cross-examination of the original complainant in respect of the discrepancy in mentioning of the two numbers on the entire record and the different number on the certificate issued by the Director of Central Food Laboratory and suggestion was made that the sample, which was collected was not sent and some other sample was sent to the Central Food Laboratory for examination.

(n) A suggestion was made that this vast difference between finding of Public Analyst and that of Central

Food Laboratory coupled with the fact that the LHA Slip No. differs go to raise reasonable doubt about the case of the prosecution.

(o) The sample food article of ghee was collected on 24th June, 1993 and it was subjected to the analysis by the Central Food Laboratory only in the month of June, 1994 as the report was signed on 16th June, 1994, meaning thereby, after a lapse of about nearly 12 months.

7. The aforesaid facts go to show that the sample food article of ghee was not collected after stirring and making the entire quantity of ghee homogeneous. This aspect of making it homogeneous was disputed by Shri Shah, learned Addl.P.P. by pointing out the fact that the testimony of the complaint show that the entire quantity of ghee was in a liquid form and therefore, it was not required to be made homogeneous. This submission of Shri Shah could be answered by the fact that mere stating that the quantity was in a liquid form, would not amount to prove that the quantity was made homogeneous. The requirement of law as it is stated in case of Laxmichand Bhailal Thakkar (Supra), the sample food article of ghee is required to be made homogeneous before the same is collected. In view of this, the contention of Shri Vaishya deserves to be

considered and accepted that the prosecution has failed in proving beyond doubt that the sample food article of ghee was collected after stirring it and making the entire quantity of ghee homogeneous.

8. Shri Shah has contented that the recoding of different number on the report of the Central Food Laboratory was merely a typographical error as held by the trial Court. The contention deserves to be examined in a back drop of the fact that the factum of collecting the sample was triggered of on the complaints made by one Shri S.M. Munshi citizen of village Zarda, Taluka : Deesa complaining that large scale of adulteration is going on in edibles being sold at market of Patan and Deesa. Pursuant to this complaint, as it has come out in the letter at Ex.35 dated 27.8.1993 addressed by the Food Inspector to the Local Health Authority that pursuant to complaint of Shri S.M. Munshi of Zarda, about 30 shops were heavily checked and samples were collected, which were under process. The sample food article of ghee was collected on 24th June, 1993 and it was subjected to the analysis by the Central Food Laboratory only in the month of June, 1994 as report was signed on 16th June, 1994, meaning thereby, after a lapse of about nearly 12 months. The submission of Shri Vaishya that the possibility cannot be ruled out that

due to time gap, the deficiency in meeting the standard might have occurred, deserves consideration.

9. In view of the aforesaid discussion, this court, though is not in complete agreement with the reasoning adopted by the trial Court for acquitting the accused, is of the view that the order of acquittal dated 19.9.1995 passed in Criminal Case No. 2303 of 1993 does not call for any interference in this acquittal appeal and the appeal deserves to be dismissed and is dismissed accordingly.

(S.R.BRAHMBHATT, J.)

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